



Paper No. 9

HUTCHINS WHEELER & DITTMAR  
101 FEDERAL STREET  
BOSTON MA 02110

**COPY MAILED****FEB 13 2002****OFFICE OF PETITIONS**

In re Application of  
Gulko, et al.  
Application No. 09/745,011  
Filed: December 20, 2000  
Attorney Docket No. GFM-00101

:  
: DECISION ON PETITION  
:  
:

This is a decision on the "Petition for Original Filing Date", filed December 31, 2001 (Certificate of Mailing dated November 5, 2001), which is being treated as a Petition Under 37 CFR 1.53(e) to accord the above-identified application a filing date of December 20, 2000.

Application papers in the above-identified application were filed on December 20, 2000. However, on October 29, 2001, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings.

Applicant asserts that the application was in fact filed with drawings, and that no further deposit of drawings is necessary to be entitled to a filing date. In support thereof, applicant submitted a postcard receipt identifying this application, itemizing "49 sheets of drawings" as enclosed, bearing a United States Patent and Trademark Office date-stamp of December 20, 2000, and lacking any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, the petition is **GRANTED**.

Given the basis for granting the petition, no petition fee is required and none has been charged.

Examination of the application file reveals that a Notice to File Missing Parts was mailed on January 8, 2002, informing applicant that \$30 was missing from the filing fee and that the application had been accorded a filing date of December 31, 2001. Applicant already submitted the \$1668 fee that was required by an earlier Notice to File Missing Parts mailed on May 16, 2001.<sup>1</sup>

<sup>1</sup> Applicant paid the \$1668 fee (\$710 filing fee, \$828 for claims in excess of 20, and \$130 surcharge for late filing of the oath or declaration) on May 29, 2001.

Accordingly, to the extent that the Notice to File Missing Parts dated January 8, 2002 requires an additional filing fee and states that the application has been accorded a filing date of December 31, 2001, the Notice appears to have been issued in error and is hereby VACATED. However, applicant is still required to submit substitute drawings in compliance with 37 CFR 1.84 within two months of the mail date of the Notice (January 8, 2002). Extensions of time are available under 37 CFR 1.136(a).

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filings date of December 20, 2000, using the application papers received in the Office on that date and 49 sheets of drawings resupplied on petition filed December 20, 2000, and for issuance of a corrected filing receipt as per the request filed May 29, 2001 (paper no. 5). Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy